

REMARKS

Amendments to the Specification

The specification has been amended at page 45 to correct a typographical error. The term "aromatic" has been deleted. One of skill in the art would recognize that the phrase "...treating the aromatic amine of the ornithine with...." is incorrect in that the ornithine amine is by definition not aromatic.

Amendments to the Claims

Claims 1, 2, 5-12, 15-27, and 30-36 are pending in the present application.

Applicants have amended claim 16 to claim the subject matter which Applicants regard as the invention with greater clarity. Support for this amendment can be found in previously filed claim 16.

Claims 1, 2, 7-11, 27, 31, and 34 has been amended to correct typographical errors in the chemical structures that occurred when scanning the previous amendment for facsimile transmission. Support for the amendments to claims 1, 2, 7-11, 27, 31, and 34 can be found in the original and previously filed claims.

Claim 30 has been amended to more clearly define a subset of the compounds of formula 1 and 2 and to more clearly define the method. Support for this amendment can be found in previously filed claim 30 and throughout the specification. See e.g. page 45, lines 3-8 and page 46, lines 7-12.

Accordingly, upon entry of the instant amendments, claims 1, 2, 5-12, 15-27, and 30-36 will be pending in this application. None of the amendments introduces new matter.

Provisional Obviousness-Type Double Patenting Rejection

Claims 1 and 2 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of the co-pending United States patent application 09/739,535.

Applicants enclose a terminal disclaimer which obviates this ground of rejection.

Rejections under 35 U.S.C. § 112, first paragraph

Claim 30

Claim 30 stands rejected under 35 U.S.C. § 112, first paragraph. The Office Action states that the specification does not explain how to convert a compound of claim 27 into a compound of claim 1 or 2.

Applicants have amended claim 30 to recite a method of using the compounds of claim 27 to prepare a compound described by a subgenus of the compounds of claim 1 or 2.

Claim 16-26 and claim 36

Claims 16-26 and claim 36 stand rejected under 35 U.S.C. § 112, first paragraph, “as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.”

The Office Action states that the specification is insufficient to support that portion of the claim drawn to the method of treating a bacterial infection under conditions effective to “control or eliminate” said bacterial infection. Applicants respectfully disagree with this conclusion; however, solely to expedite prosecution, Applicants have amended claim 16 to replace the phrase “control or eliminate” with the term “ameliorate,” thus overcoming this objection.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, first paragraph.

Rejections under 35 U.S.C. § 112, second paragraph

Claims 1, 2, 5-12, 15-27, and 30-36 stand rejected under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.”

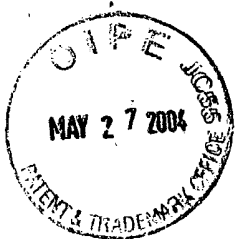
Claims 1, 2, 5-12, 15-27, and 31-36

Claims 1, 2, 5-12, 15-22, 24-27, and 31-36 stand rejected due to typographical errors in the claims. Applicants have amended claims 1, 2, 7-11, 23, 31 and 34 to correct the typographical errors.

Claim 30

The Office Action states that Claim 30 is indefinite as to the process steps. In response, Applicants have amended claim 30 to recite process steps.

Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.



U.S. Application No. 09/738,742

Attorney Docket No. C058

CONCLUSION

For the reasons presented above, Applicants respectfully request entry of the present Preliminary Amendment and prompt allowance of all pending claims. The Commissioner is authorized to deduct any deficient amount or credit any surplus amount to Deposit Account No. 50-1986.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Timothy J. Douros

May 25, 2004
Signature Date